

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 UNITED STATES OF AMERICA,) CASE NO. 16-CR-524 (FAB)
5 Plaintiff,)
6)
7 vs.) SENTENCING HEARING
8)
9 [1] JOSUE MARRERO-PEREZ,)
10 Defendant.)
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TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE THE HONORABLE JUDGE FRANCISCO A. BESOSA
SAN JUAN, PUERTO RICO
Thursday, March 23, 2017

APPEARANCES:

For the United States:

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For the Defendant:

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Produced by mechanical stenography; computer-aided
transcription

Joe Reynosa, CSR, RPR
Official Court Reporter

(PROCEEDINGS COMMENCED AT 9:40 A.M.)

THE CLERK: Criminal Case No. 16-524, United States of America versus Josue Marrero-Perez for Sentencing Hearing.

On behalf of the Government, Assistant United States Attorney Max J. Perez-Bouret.

On behalf of the Defendant, Assistant Federal Public Defender Victor J. Gonzalez-Bothwell.

Defendant is present and assisted by the certified court interpreter.

MR. PEREZ-BOURET: Good morning, Your Honor. AUSA Max Perez-Bouret for the Government, and we are ready to proceed.

MR. GONZALEZ-BOTHWELL: Your Honor, let the record reflect that the Defendant does not need the services of the court interpreter.

THE COURT: Thank you.

Mr. Gonzalez, is there anything you would like to say on behalf of Mr. Marrero before I pronounce sentence?

MR. GONZALEZ-BOTHWELL: Yes, Your Honor.

I have reviewed docket number 47, which is the amended pre-sentence investigation report. On behalf of my client, I would like to say that the medical -- the paragraph relating to 3553 factors show that he has had a hard life when his father died when he was young, that he has had

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1 issues throughout his life from since he was a juvenile.

2 THE COURT: When did his father die?

3 MR. GONZALEZ-BOTHWELL: When he was 12-13.

4 THE COURT: Mr. Marrero, how old are you now?

5 DEFENDANT MARRERO-PEREZ: Thirty-two.

6 THE COURT: So your father died 20 years ago?

7 DEFENDANT MARRERO-PEREZ: Yes, Your Honor.

8 MR. GONZALEZ-BOTHWELL: As he has stated both in
9 the PSR, he never got over the death of his father at such a
10 young age. He felt his father was a very good father with
11 him.

12 He has also had issues with drug use throughout his
13 life. And he has a daughter that is now 16 years old and had
14 another daughter that died in 2004.

15 So, we are not saying that Mr. Marrero-Perez is a
16 saint, but he has had a rough life that I don't envy in any
17 way, shape or form, Your Honor.

18 The guideline sentence in this case is 37 to 46,
19 and we are requesting the low end of the guidelines,
20 Your Honor.

21 I know that this is a case where he has a lengthy
22 history, but most of the cases were dismissed or nolle prose
23 by the State authorities, and he only has three convictions
24 that count for a level four. So it's kind of -- he does have
25 a high criminal history level, but he has only had 17 total

1 offense level points.

2 We believe a sentence at the lower end of the
3 guidelines would be appropriate in this case. Your Honor, he
4 might be facing revocation in the case in Delaware, so that
5 would add to the sentence.

6 I believe the report contains sufficient 3553
7 factors. And he has a desire to get over this life he has
8 been leading because of his daughter that is 16 years old.

9 The Court will also be imposing a term of
10 supervised release of approximately three years. And if he
11 fails the Court, then the Court can always come back and
12 revoke him, if he does not comply with the conditions of
13 supervised release after he serves his time, Your Honor.

14 So we are requesting a sentence at the lower end of
15 the guidelines and three years of supervision. We are also
16 requesting a recommendation that he be placed in
17 Pennsylvania, and that he receive the benefits from drug
18 program and mental health programs that might be available at
19 BOP institutions in Pennsylvania, Your Honor.

20 THE COURT: Mr. Perez.

21 MR. PEREZ-BOURET: Judge, in my career, I have seen
22 few PSRs that have as much reasons to impose a different
23 guideline than the one suggested by the --

24 THE COURT: A different guideline or a variance?

25 MR. PEREZ-BOURET: A variance. A different

1 sentence than the one recommended by the guidelines, Judge.

2 THE COURT: Are you remembering when you were on
3 the other side of the room?

4 MR. PEREZ-BOURET: Well, Judge, few clients or now
5 Defendants have had so many circumstances that justify a
6 variant sentence, and it will be an upward variant sentence.
7 And it goes beyond the criminal record, Your Honor. Because
8 if we talk about in sheer numbers, we have that this
9 Defendant was arrested -- at least convicted prior to having
10 attained the age of 21, 22 convictions before turning 21; 32
11 convictions in total; 45 arrests in total.

12 He is only 31 when he was arrested, Your Honor. We
13 are not talking -- if you review this record, we would think
14 he's 70.

15 And, Judge, it goes beyond the sheer numbers.
16 Because when you delve into the underlying facts of
17 convictions, it's really disturbing.

18 I point the Court's attention to paragraph 35, when
19 this Defendant was only 14 years old, a tender age, the
20 underlying facts of that case is that he is already armed
21 when he was a teenager, 14 years old. And not only was he
22 armed, but the co-Defendant in that case said that he
23 discharged his firearm in broad daylight and in public on
24 more than one occasion.

25 Then we go to paragraph 37. Now he is 16. And,

1 again, he didn't learn from that occasion, and he is armed
2 again with a handgun.

3 Paragraph 39, still 16. And this one basically is
4 troublesome because of who the victim was. We not only have
5 this Defendant's lengthy criminal history, not only do we
6 have this Defendant's in a proclivity towards firearm, but he
7 has an anger management issue.

8 In paragraph 39, he has a conviction for assault in
9 third-degree, while he is 16. Yet the victim in this case
10 was a female that was three months' pregnant. The Defendant
11 struck her on the back three times with a 4-foot piece of
12 lattice stick causing the stick to break into several pieces.

13 Paragraph 42, now he is 17, Your Honor. Yet again,
14 we have him, along with other persons, assaulting a couple.
15 On this occasion, that female, who I understand had a prior
16 relationship with him, was also assaulted and pushed. And
17 she was two months' pregnant, Your Honor. Seventeen.

18 Then we turn the Court's attention to paragraph 46.
19 We have a serious drug offense, and he is 18.

20 In each of these sentences, up until now, he has
21 been sentenced to -- some have had prison terms, but most of
22 them have caught him a break to see if he could be
23 rehabilitated and he could rectify his behavior. But it's
24 like a pressure -- like a valve, and each time it gets more
25 serious and more serious and more serious.

1 At about age 18, he has a serious drug offense, in
2 paragraph 46, for distribution of controlled substances.

3 Then, finally, after other minors arrests, if you
4 want to call it that way, you have paragraph 60, and you have
5 him with another controlled substance offense to which he is
6 granted another break, because he is sentenced to 10 years;
7 however, they suspended those 10 years. Nine and a half of
8 those years were suspended. So he was only sentenced to six
9 months.

10 And after that, Your Honor, we have the pending
11 case in Delaware in which basically he, again, is involved in
12 controlled substances. This time heroin. And on numerous
13 occasions, according to the confidential informant, of him
14 selling and having persons that work for him that package and
15 distribute. Only this time, he flees the jurisdiction and
16 avoids prosecution and comes to Puerto Rico.

17 And now he has an outstanding arrest warrant. And
18 when that arrest warrant is executed, he is found once again
19 armed with not only one but two firearms.

20 Your Honor, we understand the history and
21 characteristics of this Defendant; we understand that he has
22 no respect for the law, evidently; we understand that this
23 sentence should take under consideration all this violence,
24 anger, weapons, controlled substances, pregnant females as
25 victims, and should reflect that track record and that

1 history.

2 In addition, this sentence should protect the
3 public from further crimes from this Defendant, Your Honor.

4 We understand that a guideline sentence of 37 to 46
5 months should not be imposed by this Court. We are hereby
6 requesting a sentence of 60 months of imprisonment in this
7 case, in addition to the supervised release as ordered by
8 law.

9 MR. GONZALEZ-BOTHWELL: Your Honor, if I may
10 respond to Mr. Max Perez-Bouret.

11 There are a lot of paragraphs that address his
12 different crimes. At age 12, criminal mischief. Same age, a
13 year later, shoplifting. He was convicted in paragraph 33 of
14 offensive touching. There is no documentation as to that,
15 what happened in that incident.

16 At age 14, he was convicted again of offensive
17 touching. Nolle prose as to the remaining count. No
18 information for the Court to determine what happened there to
19 determine if it's a serious or not offense.

20 Paragraph 35, again, disorderly conduct. Nolle
21 prose as to Count One. There were shots fired. They did not
22 find a gun on him. So the proclivity to guns is Government
23 made.

24 Paragraph 37, he finally has -- he was sentenced,
25 and there is no information as to this case, no documentation

1 as to this case.

2 Again, paragraph 38, no documentation as to what
3 happened in this case.

4 Paragraph 39, reckless physical injury. You know,
5 he got into a fight with his brother's family.

6 Then we go into adult convictions, Your Honor. And
7 most of them are licensed related. He only had three
8 convictions that count towards his criminal history.

9 Again, he is also a total offense level of 17.

10 Your Honor, the guidelines have taken into
11 consideration all these factors, and they have decided in the
12 guidelines that they will not take into consideration all the
13 factors brought up by the Government.

14 If the Court wants -- obviously, the Court has
15 discretion to go above the guidelines, but I believe that the
16 guidelines do take into conviction all the factors in the
17 life and history of Mr. Josue Marrero-Perez.

18 And, again, although I have never walked in his
19 shoes, it has not been an easy life. He does have mental
20 health problems that were diagnosed at an early age. They
21 are in the report.

22 One of the other things I am going to request from
23 the Court is the drug program and mental health treatment,
24 which I think I already stated.

25 So we can give him the 37 months. And if he fails

1 the Court during supervision, the Court will have him back.

2 And then he can decide that he deserves a higher sentence.

3 Right now we have a chance to make a difference in
4 his life by giving him appropriate treatment.

5 THE COURT: Mr. Marrero, is there anything you
6 would like to say?

7 DEFENDANT MARRERO-PEREZ: Yes.

8 I would like to thank you for letting me express
9 myself. I know I have made a lot of mistakes in my life, but
10 I am willing to change my life.

11 I know that I have to do time, and I have a lot of
12 time to think about all the mistakes that I had did
13 throughout my whole life.

14 I am also asking if you can please give me some
15 treatment and try to get some education because I only
16 completed eighth grade. So all my life I never had nothing
17 to hang from to try to learn how to -- do any kind of jobs.
18 But right now, as I feel, if I am ever able to go back to the
19 society, even if I had to work at a McDonald's, that's what I
20 am going to have to do to survive and stay in society because
21 I have a 16-year-old daughter and 4-year-old son that I have
22 to look up to, and I also have my wife.

23 I will appreciate it if that's possible. If not, I
24 leave things up to God and to you that you are the judge.

25 Thank you.

1 THE COURT: On November 28, 2016, Defendant Josue
2 Marrero-Perez pled guilty to the two-count indictment in
3 Criminal Case No. 16-524, which charges violations of
4 Title 18, United States Code sections 922(g) and 924(a)(2), a
5 convicted felon and being a fugitive in possession of two
6 firearms: A Glock pistol, Model 27, .40 caliber, serial
7 number PTL803, loaded with nine rounds of ammunition, with an
8 extra Glock magazine with another nine rounds of .40 caliber
9 ammunition; and a Smith & Wesson pistol, Model SW9VE, 9mm
10 caliber, serial number DVS4738, loaded with 16 rounds of 9mm
11 caliber ammunition, with an extra magazine with 15 rounds of
12 9mm caliber ammunition.

13 This is a class C felony.

14 The November 1st 2016 Edition of the Sentencing
15 Guidelines Manual has been used to calculate the guideline
16 adjustments pursuant to the provisions of guideline section
17 1B1.11(a).

18 Because both counts involve the same act or
19 transaction, they are grouped pursuant to sentencing
20 guideline section 3D1.2(a).

21 Because Mr. Marrero has been convicted for
22 committing this offense after having sustained at least one
23 felony conviction of a controlled substance offense, a base
24 offense level of 20 has been determined pursuant to
25 sentencing guideline section 2K2.1(a)(4)(A).

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1 Because Mr. Marrero timely accepted responsibility
2 for his offense, however, the offense level is reduced by
3 three levels pursuant to guideline sections 3E1.1(a) and
4 3E1.1(b).

5 There are no other applicable guideline
6 adjustments.

7 His total offense level is 17.

8 On August 2, 2006, Mr. Marrero was sentenced to
9 three years' imprisonment for possession with intent to
10 distribute a controlled substance, possession of a weapon
11 with a removed obliterated or altered serial number, and
12 conspiracy in the second degree by the New Castle County
13 Superior Court in Wilmington, Delaware. Accordingly, three
14 criminal history points resulted from that conviction.

15 On January 13, 2012, he was sentenced to 12 months'
16 probation for possession of controlled substances and/or
17 counterfeiting human growth hormones. For this conviction,
18 one criminal point results.

19 On February 19, 2016, Mr. Marrero benefited from a
20 suspended sentence of nine years and six months for
21 possession of a Schedule I or II controlled substance by the
22 Circuit Court for the County of Greensville, Virginia, which
23 results in one more criminal history point.

24 Because Mr. Marrero committed this offense while
25 under a criminal justice sentence, because of his conviction

1 by the Circuit Court for the County of Greenville, Virginia,
2 two more criminal history points result pursuant to
3 sentencing guideline section 4A1.1(d).

4 Accordingly, Mr. Marrero's total criminal history
5 points add up to seven, which places him in Criminal History
6 Category IV.

7 Based on a total offense level of 17 and a Criminal
8 History Category of IV, the guideline imprisonment range for
9 Mr. Marrero's offense is from 37 to 46 months.

10 There is a fine range of \$10,000 to \$95,000, plus a
11 supervised release term of at least one year but not more
12 than three years.

13 The probation officer has correctly computed the
14 guideline computations, and the pre-sentence investigation
15 report satisfactorily reflects the components of
16 Mr. Marrero's offense by considering its nature and
17 circumstances.

18 The Court has also considered the other sentencing
19 factors set forth in Title 18, United States Code
20 section 3553(a).

21 Mr. Marrero is 31 years old. He is a resident of
22 Delaware. He completed the eighth grade and was unemployed
23 prior to his arrest for his offense.

24 He has a history of using marijuana that began
25 between the ages of 9 and 13, and has a history of consuming

1 alcohol, which have resulted in some DWI convictions.

2 He is physically healthy but reported a diagnosis
3 of learning disabilities.

4 Mr. Marrero's vast prior record, as reflected in
5 the pre-sentence investigation report and history of
6 convictions, indicates that his Criminal History Category
7 substantially underrepresents the seriousness of his offense
8 or the likelihood that he will commit other crimes.

9 Accordingly, the Court will impose an upward
10 variant sentence pursuant.

11 Mr. Marrero has been arrested at least 44 times
12 during his life. His first reported arrest was at the age of
13 12, at which time he was found delinquent. He was
14 adjudicated as a juvenile on nine separate occasions.

15 As an adult, Mr. Marrero has more than 20
16 convictions, which include but are not limited to driving
17 under the influence, resisting arrest, possession with the
18 intent to deliver controlled substances, possession of
19 weapons, aggravated harassment, maintaining a dwelling for
20 keeping controlled substances, possession of drug
21 paraphernalia, and assault in the second degree.

22 In addition to those offenses, Mr. Marrero has also
23 incurred numerous traffic violations in Delaware, including
24 conviction for driving without a license, driving while under
25 a suspended or revoked license, and failure to reinstate his

1 license.

2 As a result, his Delaware driver's license, number
3 1334287, has been suspended. Currently he has two
4 outstanding arrest warrants, and one is extraditable for
5 drug-related charges in Delaware.

6 According to documentation received from the
7 probation officer, in the District of Delaware, Mr. Marrero
8 has the following known history of warrants: 25 failure to
9 appear, 13 violations of probation, and 28 failures to pay,
10 all of which is consistent with Mr. Marrero's utter disregard
11 for the law and highly likelihood of recidivism.

12 The Court finds that a sentence within the
13 applicable guideline range does not reflect the seriousness
14 of the offense, does not promote respect for the law, does
15 not protect the public from further crimes by Mr. Marrero,
16 and does not address the issues of deterrence and punishment.

17 Accordingly, the Court will vary upward based on
18 the underrepresentation of Defendant's criminal history.

19 It is the judgment of the Court that Josue
20 Marrero-Perez is committed to the custody of the Bureau of
21 Prisons to be imprisoned for a term of 72 months.

22 Upon release from confinement, Mr. Marrero shall be
23 placed on supervised release for a term of three years to be
24 served under the following term and conditions:

25 He shall observe the standard conditions of

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1 supervised release recommended by the United States
2 Sentencing Commission and adopted by this Court.

3 He shall not commit another Federal, State or local
4 crime.

5 He shall not possess firearms, destructive devices
6 or other dangerous weapons.

7 He shall not possess controlled substances
8 unlawfully.

9 He shall participate in transitional and reentry
10 support services, including cognitive behavioral treatment
11 services, under the guidance and supervision of the probation
12 officer.

13 Mr. Marrero shall participate in the services until
14 he is satisfactorily discharged by the service provider with
15 the approval of the probation officer.

16 Now, those services include, Mr. Marrero, anger
17 management services.

18 He shall complete his high school education and
19 shall participate in vocational training and a job placement
20 program as recommended by the probation officer.

21 He shall provide the probation officer access to
22 any financial information upon request.

23 He shall participate in an approved mental health
24 treatment program for evaluation and to determine if
25 treatment is necessary.

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1 If deemed necessary, treatment will be arranged by
2 the probation officer in consultation with the treatment
3 provider.

4 The modality, duration and intensity of treatment
5 will be based on the risks and needs identified.

6 Mr. Marrero shall contribute to the cost of those
7 services based on his ability to pay or the availability of
8 payments by third parties.

9 He shall cooperate in the collection of a DNA
10 sample as directed by the probation officer pursuant to the
11 revised DNA collection requirements and Title 18, United
12 States Code section 3563(a)(9).

13 He shall submit himself and his property, house,
14 residence, vehicles, papers and effects, computers and other
15 electronic or data storage devices or media to a search at
16 any time, with or without a warrant, by the probation officer
17 and, if necessary, with the assistance of any other law
18 enforcement officer, but only in the lawful discharge of the
19 supervision functions of the probation officer, who must have
20 a reasonable suspicion of unlawful conduct or of a violation
21 of a condition of supervised release.

22 The probation officer may seize any communication
23 or electronic device or medium, which will be subject to
24 further forensic investigation or analysis.

25 Failure to permit a search and seizure may be

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1 grounds for revocation of supervised release.

2 Mr. Marrero shall warn any other resident or
3 occupant that his premises may be subject to searches
4 pursuant to this condition.

5 He shall not possess or use controlled substances
6 unlawfully and shall submit to a drug test within 15 days of
7 release from imprisonment.

8 After his release, Mr. Marrero shall submit to
9 random drug testing, not less than three samples during the
10 supervision period, but not more than 104 samples each year,
11 in accordance with the Drug Aftercare Program Policy of the
12 United States Probation Office, as has been approved by this
13 Court.

14 If the illegal use of controlled substances is
15 detected in any sample, Mr. Marrero shall participate in an
16 inpatient or an outpatient substance abuse treatment program
17 for evaluation or treatment as arranged by the probation
18 officer.

19 Payment shall be based on his ability to pay or the
20 availability of payments by third parties as approved by the
21 Court.

22 Having considered Mr. Marrero's financial
23 condition, a fine is not imposed.

24 A special monetary assessment in the amount of \$100
25 for each count, for a total of \$200, is imposed, however, as

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1 required by law.

2 Mr. Marrero, you have a right to appeal your
3 conviction and sentence.

4 Any notice of appeal must be filed in this court
5 within 14 days from when the judgment is entered.

6 You have a right to apply for leave to appeal *in*
7 *forma pauperis* if you are unable to pay the cost of an
8 appeal.

9 Because you are represented by court-appointed
10 counsel, he will continue to represent you through any appeal
11 unless a substitute counsel is later appointed.

12 The forfeiture will be made part of the judgment.

13 I will recommend that Mr. Marrero be designated to
14 either FCI Fairton, New Jersey, or FCI Fort Dix, New Jersey.

15 Also, I would recommend that he participate in the
16 500-hour drug treatment program, if he qualifies.

17 Remember, Mr. Gonzalez, this is a weapons case.

18 MR. GONZALEZ-BOTHWELL: He is aware of that,
19 Your Honor.

20 THE COURT: So I hope that he does qualify, and I
21 do hope that he is accepted in the program.

22 MR. GONZALEZ-BOTHWELL: Thank you, Your Honor.

23 THE COURT: And, Mr. Marrero, if there are any
24 courses leading to a high school diploma while in the
25 institution, please take advantage of them, plus any

1 vocational training that you may be interested in.

2 Also, while in the institution, you may want to ask
3 if there is any treatment for anger management -- I really
4 think you need that -- plus any psychological treatment that
5 you may be -- that you may qualify for.

6 Anything else?

7 MR. GONZALEZ-BOTHWELL: Yes, Your Honor.

8 Probation had provided me this morning with the
9 documentation they used, and I request that they provide me a
10 copy. I requested one, but they only allowed me to review it
11 in court. I request a copy to be made available for my
12 record from the U.S. Probation.

13 She stated that she needed an order from the Court.

14 THE COURT: Can you make a copy of that for
15 Mr. Gonzalez?

16 THE PROBATION OFFICER: Yes, sir.

17 THE COURT: What Ms. Mojica told me was that, when
18 you asked for those documents, she asked that you go by the
19 probation officer to review and get whatever copies you
20 needed, but you didn't go.

21 MR. GONZALEZ-BOTHWELL: No. I understand. That's
22 why I am asking for a copy from the Court, like she told me
23 that I needed to do.

24 THE COURT: Okay. No problem.

25 Anything else?

1 MR. GONZALEZ-BOTHWELL: Your Honor, the only thing
2 is that he would prefer, if the Court would make the
3 recommendation to a federal institution in Pennsylvania
4 instead of New Jersey.

5 THE COURT: Well, I recommended these two because
6 they are near Delaware, because he is wanted in Delaware.

7 MR. GONZALEZ-BOTHWELL: We are aware of that,
8 Your Honor. Yes. Yes.

9 THE COURT: All right. Thank you.
10 You are excused.

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12 (PROCEEDINGS ADJOURNED AT 10:10 A.M.)
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REPORTER'S CERTIFICATE

I, JOE REYNOSA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer-aided transcript of proceedings had in the within-entitled and numbered cause on the date herein set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

S/Joe Reynosa

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